

109TH CONGRESS
2ND SESSION

S. 2264

To provide enhanced consumer protection from unauthorized sales and use of confidential telephone information by amending the Communications Act of 1934, prohibiting certain practices, and providing for enforcement by the Federal Trade Commission and States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2006

Mr. PRYOR (for himself and Mr. NELSON of Florida) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide enhanced consumer protection from unauthorized sales and use of confidential telephone information by amending the Communications Act of 1934, prohibiting certain practices, and providing for enforcement by the Federal Trade Commission and States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Consumer Phone Record Security Act of 2006”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Fraud and related activity in connection with obtaining customer proprietary network information.

Sec. 3. Enforcement by Federal Trade Commission.

Sec. 4. Concurrent enforcement by Federal Communications Commission.

Sec. 5. Enforcement by States.

Sec. 6. Consumer redress.

Sec. 7. Protection of customer proprietary network information.

3 **SEC. 2. FRAUD AND RELATED ACTIVITY IN CONNECTION**
 4 **WITH OBTAINING CUSTOMER PROPRIETARY**
 5 **NETWORK INFORMATION.**

6 (a) UNAUTHORIZED ACCESS OR USE OF CPNI.—It
 7 is unlawful for any person—

8 (1) to obtain, or attempt to obtain, an individ-
 9 ual's customer proprietary network information
 10 without authorization from the individual to whom
 11 the information relates by—

12 (A) making false or fraudulent statements
 13 or representations to an employee or customer
 14 of a telecommunications carrier;

15 (B) providing false documentation to a
 16 telecommunications carrier; or

17 (C) accessing customer accounts of a tele-
 18 communications carrier via the Internet; or

19 (2) to cause, or attempt to cause, an individ-
 20 ual's customer proprietary network information to
 21 be disclosed to any other person without authoriza-

1 tion from the individual to whom the information re-
2 lates.

3 (b) UNAUTHORIZED SALE OF CUSTOMER PROPRI-
4 ETARY NETWORK INFORMATION.—Except as otherwise
5 authorized by law, it is unlawful for any person to sell,
6 or offer for sale, customer proprietary network informa-
7 tion without affirmative written authorization from the in-
8 dividual to whom the information relates.

9 (c) SOLICITATION TO OBTAIN CUSTOMER PROPRI-
10 ETARY NETWORK INFORMATION.—It is unlawful for any
11 person to request that another person obtain customer
12 proprietary network information from a telecommuni-
13 cations carrier, knowing that the other person will obtain
14 the information from the telecommunications carrier in
15 any manner that is unlawful under subsection (a).

16 (d) LAW ENFORCEMENT EXCEPTION.—Nothing in
17 this section prohibits a law enforcement officer from ob-
18 taining customer proprietary network information from a
19 telecommunications carrier if—

20 (1) the officer, employee, or agent is acting
21 within his or her scope of employment;

22 (2) the officer, employee, or agent is authorized
23 by law to obtain the information; and

1 (3) the information may lawfully be disclosed to
2 the officer pursuant to court order or other legal au-
3 thority.

4 (e) DEFINITIONS.—In this section:

5 (1) CUSTOMER PROPRIETARY NETWORK INFOR-
6 MATION.—The term “customer proprietary network
7 information” has the meaning given that term in
8 section 222(i)(1) of the Communications Act of
9 1934 (47 U.S.C. 222(i)(1))).

10 (2) LAW ENFORCEMENT OFFICER.—The term
11 “law enforcement officer” has the meaning given
12 that term in section 232(7) of title 18, United
13 States Code.

14 (3) TELECOMMUNICATIONS CARRIER.—The
15 term “telecommunications carrier” has the meaning
16 given that term in section 222(i)(8) of the Commu-
17 nications Act of 1947 (47 U.S.C. 222(i)(8)).

18 **SEC. 3. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

19 (a) IN GENERAL.—Except as provided in sections 4,
20 5, and 6 of this Act, this Act shall be enforced by the
21 Federal Trade Commission.

22 (b) VIOLATION TREATED AS AN UNFAIR OR DECEP-
23 TIVE ACT OR PRACTICE.—Violation of section 2 shall be
24 treated as an unfair or deceptive act or practice proscribed

1 under a rule issued under section 18(a)(1)(B) of the Fed-
2 eral Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

3 (c) ACTIONS BY THE COMMISSION.—The Commission
4 shall prevent any person from violating this Act in the
5 same manner, by the same means, and with the same ju-
6 risdiction, powers, and duties as though all applicable
7 terms and provisions of the Federal Trade Commission
8 Act (15 U.S.C. 41 et seq.) were incorporated into and
9 made a part of this Act. Any person that violates section
10 2 is subject to the penalties and entitled to the privileges
11 and immunities provided in the Federal Trade Commis-
12 sion Act in the same manner, by the same means, and
13 with the same jurisdiction, powers, and duties as though
14 all applicable terms and provisions of the Federal Trade
15 Commission Act were incorporated into and made a part
16 of this Act.

17 (d) ADDITIONAL PENALTY.—In addition to any other
18 penalty prescribed by law—

19 (1) a civil penalty of not more than \$11,000
20 shall be imposed for each violation of section 2 of
21 this Act; and

22 (2) a violation of section 2 of this Act with re-
23 spect to the customer network proprietary informa-
24 tion of an individual shall be treated as a separate
25 violation from a violation of section 2 of this Act

1 with respect to the customer network proprietary in-
2 formation of any other individual.

3 **SEC. 4. CONCURRENT ENFORCEMENT BY FEDERAL COM-**
4 **MUNICATIONS COMMISSION.**

5 The Federal Communications Commission shall en-
6 force section 2. For purposes of enforcement of that sec-
7 tion by the Commission, a violation of that section is
8 deemed to be a violation of a provision of the Communica-
9 tions Act of 1934 (47 U.S.C. 151 et seq.) rather than a
10 violation of the Federal Trade Commission Act.

11 **SEC. 5. ENFORCEMENT BY STATES.**

12 (a) IN GENERAL.—A State, as *parens patriae*, may
13 bring a civil action on behalf of its residents in an appro-
14 priate district court of the United States to enforce section
15 2 or to impose the civil penalties authorized by section
16 3, whenever the chief legal officer of the State has reason
17 to believe that the interests of the residents of the State
18 have been or are being threatened or adversely affected
19 by a violation of this Act or a regulation under this Act.

20 (b) NOTICE.—The State shall serve written notice on
21 the Federal Trade Commission and the Federal Commu-
22 nications Commission of any civil action under subsection
23 (a) prior to initiating such civil action. The notice shall
24 include a copy of the complaint to be filed to initiate such
25 civil action, except that if it is not feasible for the State

1 to provide such prior notice, the State shall provide such
2 notice immediately upon instituting such civil action.

3 (c) AUTHORITY TO INTERVENE.—Upon receiving the
4 notice required by subsection (b), either Commission may
5 intervene in such civil action and upon intervening—

6 (1) be heard on all matters arising in such civil
7 action; and

8 (2) file petitions for appeal of a decision in such
9 civil action.

10 (d) CONSTRUCTION.—For purposes of bringing any
11 civil action under subsection (a), nothing in this section
12 shall prevent the chief legal officer of a State from exer-
13 cising the powers conferred on that officer by the laws of
14 such State to conduct investigations or to administer oaths
15 or affirmations or to compel the attendance of witnesses
16 or the production of documentary and other evidence.

17 (e) VENUE; SERVICE OF PROCESS.—

18 (1) VENUE.—An action brought under sub-
19 section (a) shall be brought in a district court of the
20 United States that meets applicable requirements re-
21 lating to venue under section 1391 of title 28,
22 United States Code.

23 (2) SERVICE OF PROCESS.—In an action
24 brought under subsection (a)—

1 (A) process may be served without regard
2 to the territorial limits of the district or of the
3 State in which the action is instituted; and

4 (B) a person who participated in an al-
5 leged violation that is being litigated in the civil
6 action may be joined in the civil action without
7 regard to the residence of the person.

8 **SEC. 6. CONSUMER REDRESS.**

9 (a) IN GENERAL.—An individual whose customer
10 proprietary network information has been obtained, used,
11 or sold in violation of section 2 may file a civil action in
12 any court of competent jurisdiction against the person who
13 committed the violation.

14 (b) REMEDIES.—A court in which such a civil action
15 has been brought may—

16 (1) impose a civil penalty of not more than
17 \$11,000 for each violation of this Act with respect
18 to the plaintiff's customer proprietary network infor-
19 mation; and

20 (2) provide such additional relief as the court
21 deems appropriate, including the award of court
22 costs, investigative costs, and reasonable attorney's
23 fees.

24 (c) LIMITATION.—Nothing in this section authorizes
25 an individual to bring a civil action against a telecommuni-

1 cations carrier (as defined in section 222(i)(8) of the Com-
 2 munications Act of 1947 (47 U.S.C. 222(i)(8))).

3 **SEC. 7. PROTECTION OF CUSTOMER PROPRIETARY NET-**
 4 **WORK INFORMATION.**

5 (a) IN GENERAL.—Section 222 of the Communica-
 6 tions Act of 1934 (47 U.S.C. 222) is amended—

7 (1) by redesignating subsection (h) as sub-
 8 section (i); and

9 (2) by inserting after subsection (g) the fol-
 10 lowing:

11 “(h) PROTECTION OF CUSTOMER PROPRIETARY
 12 NETWORK INFORMATION.—

13 “(1) IN GENERAL.—A telecommunications car-
 14 rier shall—

15 “(A) implement a system by which the car-
 16 rier can determine whether an individual has
 17 authorized access to, or the release of, an indi-
 18 vidual’s customer proprietary network informa-
 19 tion before it is made available to third parties;

20 “(B) ensure that personnel with access to
 21 customer proprietary network information are
 22 trained as to when they are and are not author-
 23 ized to use customer proprietary network infor-
 24 mation and have a disciplinary process in effect

1 for disciplining personnel for misuse of cus-
2 tomer proprietary network information;

3 “(C) maintain for at least 1 year a record
4 of any sales or marketing campaign conducted
5 by carrier or its affiliates that uses customer
6 proprietary network information;

7 “(D) maintain for at least 1 year a record
8 of each instance in which customer proprietary
9 network information was disclosed or provided
10 to the customer or third parties, or where third
11 parties were allowed access to customer propri-
12 etary network information, in the sales or mar-
13 keting campaign that includes—

14 “(i) a description of the sales or mar-
15 keting campaign in which the information
16 was used;

17 “(ii) the specific customer proprietary
18 network information that was used in the
19 campaign; and

20 “(iii) a description of the products
21 and services that were offered as a part of
22 the campaign;

23 “(E) establish a supervisory review process
24 regarding compliance with this subsection for

1 outbound marketing situations and maintain for
2 at least 1 year a record of its compliance;

3 “(F) require an officer or agent of the car-
4 rier to sign a compliance certificate on an an-
5 nual basis stating that the officer or agent has
6 personal knowledge that the carrier has estab-
7 lished operating procedures that are adequate
8 to ensure compliance with this subsection; and

9 “(G) submit to the Commission annually—

10 “(i) a copy of the certificate required
11 by subparagraph (F); and

12 “(ii) a plan that reflects its compli-
13 ance with the requirements of this sub-
14 section.

15 “(2) ANNUAL FCC REPORTS.—The Commis-
16 sion shall transmit a report to the Senate Committee
17 on Commerce, Science, and Transportation and the
18 House of Representatives Committee on Energy and
19 Commerce annually on the compliance of tele-
20 communications carriers with the requirements of
21 this subsection.”.

22 (b) DEFINITIONS.—Section 222(i) of the Commu-
23 nications Act of 1934 (as redesignated by subsection (a))
24 is amended by adding at the end the following:

1 “(8) TELECOMMUNICATIONS CARRIER.—The
2 term ‘telecommunications carrier’—

3 “(A) has the meaning given that term by
4 section 3(44); but

5 “(B) includes a provider of IP-enabled
6 voice service.

7 “(9) IP-ENABLED VOICE SERVICE.—The term
8 ‘IP-enabled voice service’ means the provision of
9 real-time 2-way voice communications offered to the
10 public, or such classes of users as to be effectively
11 available to the public, transmitted through cus-
12 tomer premises equipment using TCP/IP protocol,
13 or a successor protocol, for a fee (whether part of
14 a bundle of services or separately) with 2-way inter-
15 connection capability such that the service can origi-
16 nate traffic to, and terminate traffic from, the public
17 switched telephone network.”.

18 (c) REGULATIONS.—Within 90 days after the date of
19 enactment of this Act, the Federal Communications Com-
20 mission shall promulgate such regulations as may be nec-
21 essary to implement section 222(i)(8) of the Communica-
22 tions Act of 1934 (47 U.S.C. 222(i)(8)), as added by sub-
23 section (b) of this section, including the application of sec-

- 1 tion 222 of that Act with the expanded definition of tele-
- 2 communications carrier.

